Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Public Notice Seeking Comment on the Business Broadband Marketplace	)	WC Docket No. 10-188
	)	

REPLY COMMENTS OF CALTEL

Pursuant to the Commission's Public Notice Requesting Comment,[1] the California Association of Competitive Telecommunications Companies[2] ("CALTEL") appreciates the opportunity to file the following reply comments on behalf of its members.[3]

I. Introduction and Summary

The comments of more than fifteen parties filed in this proceeding (including those filed by CALTEL) described a wide variety of broadband product and service options currently available to business customers. Notwithstanding the seeming diversity of these comments, the Commission can and should draw the following conclusions from them:

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[1] Pleading Cycle Established for Comment on the Business Broadband Marketplace, Federal Communications Commission WC Docket No. 10-188 (DA 10-1743), September 15, 2010.

[2] CALTEL is a non-profit trade association working to advance the interests of fair and open competition and customer-focused service in California telecommunications. CALTEL members are entrepreneurial companies building and deploying next-generation networks to provide competitive voice, data, and video services. The majority of CALTEL members are small businesses who help to fuel the California economy through technological innovation, new services, affordable prices and customer choice.

[3] See www.caltel.org for a list of CALTEL member companies.

1. Customers of retail business broadband products and services located in major metropolitan areas currently have access to, and value the variety of, competitive carrier solutions to meet their evolving communications needs;
2. As the Commission found in its recent analysis of the competitive market for voice services in the Phoenix, Arizona Metropolitan Statistical Area (MSA), carriers that offer the majority of those retail business broadband competitive options primarily rely on wholesale inputs from an incumbent LEC in order to do so;
3. ILEC claims that the wholesale broadband market is "extremely robust"[4] or "extensive"[5] are unsupported and refuted by the overwhelming evidence provided in the comments of other parties;
4. There are regulatory barriers that impact the ability of current business customers to retain, and for more business customers to obtain, access to lower-cost, higher-speed, more flexible broadband services like Ethernet over Copper and IP-based communications solutions;
5. Past Commission predictions and decisions about the viability of copper facilities, the economics of fiber deployment, and the availability of alternative wholesale inputs clearly are in need of reevaluation in light of the current facts and technological developments.

[4] *See* Comments of AT&T Inc. ("AT&T Comments") at page 33.

[5] *See* Comments of Verizon and Verizon Wireless ("Verizon Comments") at page 23.

As a result, CALTEL agrees with the Section 271 Coalition that the Commission should open a "comprehensive" Notice of Proposed Rulemaking (NPRM)[6] to address the wholesale competition issues outlined in Recommendations 4.7, 4.9, and 4.10 of the Commission's National Broadband Plan.[7]

II. Retail Business Broadband Customers Currently Have Access To a Number of Competitive Solutions With Which to Meet their Evolving Communications Needs

The comments filed in this proceeding on October 15 leave an overstated impression that business customers have a dizzying array of broadband products and services from which to choose. The comments of Verizon and Verizon Wireless (Verizon), supplemented as it was with over 1,000 pages of screen prints of pages from competitor websites,[8] was calculated to convince the Commission that business customers enjoy abundant competitive choice.

While it is true that business customers may have the ability to choose services from more than one carrier, CALTEL cautions the Commission against concluding that that the *majority* of these options are available to the *majority* of business customers. Several of the comments correctly note that many offerings are geared for larger enterprise customers, and that only a portion of communications purchases by those types of customers are perceived to be "broadband," i.e. obtained for the purpose of accessing

[6] *See* Comments of the Section 271 Coalition ("271 Coalition Comments") at page 20.

[7] *See* Federal Communications Commission, Connecting America: The National Broadband Plan, Chapter 4, pp. 50-51; http://download.broadband.gov/plan/national-broadband-plan.pdf ("National Broadband Plan").

[8] *See* Verizon Comments, Appendix B: Examples of Competitors' Business Broadband Offerings.

the Internet.[9] Similarly, other comments correctly note that rural business customers currently have significantly fewer broadband product and service options.[10] And the same can be said for very small businesses, even within large MSAs.[11]

As CALTEL's and other's comments show, the small-to-medium business customer has a marked preference for products and services that bundle voice, broadband and video capabilities over a single connection.[12] Carriers know this, and provide those bundled solutions. In other words, there simply is not a market to sustain carriers that offer *only* voice services to small and medium businesses.

Because small and medium business customers seek out bundled voice and broadband services over a single connection, the Commission can look to its recent

[9] *Id.* at pp. 6-7.

[10] *See* Comments of the Office of Advocacy, U.S. Small Business Administration ("SBA Comments") at pp. 2-3, Comments of the National Telecommunications Cooperative Association, throughout, and Comments of the Blooston Rural Carriers at pp. ii-iii.

[11] *See* CALTEL Comments at page 24, Comments of Qwest Communications International Inc. ("Qwest Comments") at page 2.

[12] *See* CALTEL Comments at page 9, pp. 16-18, pp. 24-25. *See also* Verizon Comments at page 6, finding that "it is often difficult to separate broadband services from the other communications services that a business customer may purchase—whether voice, video, or other types of data services" and that "as an initial matter, many business customers purchase broadband in a bundle with other communications services, and any attempt to separate out the broadband components is necessarily arbitrary." *See also* AT&T Comments at page 21, finding that "broadband providers are also offering more attractive bundles that provide steep discounts and one-stop shopping for a small or medium business' telephone, broadband, video and mobile voice and broadband needs." *See also* Comments of Cbeyond, Inc., Integra Telecom, Inc., Megapath, Inc., Covad Communications Company and tw telecom, Inc. ("Cbeyond et al Comments") at pp. 4-5 ("businesses of all sizes increasingly seek to utilize competitors' service to…simplify their networks and combine voice, data, video, and Internet traffic over a single connection"), *and also* Comments of Time Warner Cable Inc. ("Time Warner Cable Comments") ("business customers often find the combination of broadband Internet access and voice services attractive in light of the convenience and savings").

analysis of the competitive market for voice services in the Phoenix, Arizona MSA as a proxy for evaluating the broadband options that are actually available to business customers in large metropolitan areas.[13] This analogy is also appropriate because, as the Commission recognized in the Phoenix Order, competitive carriers utilize legacy copper loops leased as UNEs to "invest in equipment and technologies to provide innovative broadband and video services."[14]

In Phoenix, competitive data provided by the Arizona Corporation Commission apparently found that for the entire retail business ("enterprise services") market, in addition to the incumbent cable provider, "Qwest faces competition from more than a dozen competitive LECs. These competitors, other than Cox, rely predominantly upon Qwest facilities, including UNEs and other wholesale services, to provide their services."[15]

III. Competitors Primarily Rely on Wholesale Inputs from an Incumbent LEC To Provide Broadband Products and Services to Business Customers

Comments filed in this proceeding confirmed that the Commission's conclusions in the Phoenix Order regarding competitors' reliance on wholesale inputs from an ILEC are applicable to the business broadband market and to other metropolitan areas across the country. Although CALTEL does not have access to the detailed market share data in the unredacted version of the Phoenix Order, that data enabled the Commission to

[13] *See* Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Phoenix, Arizona Metropolitan Statistical Area, WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622, June 22, 2010 ("Phoenix Order").

[14] *Id.* at paragraph 108.

[15] *Id.* at paragraph 68.

conclude there that "none of Qwest's competitors, either individually or in the aggregate, have deployed facilities that enable effective competition to Qwest in the absence of the regulated wholesale offerings at issue."[16] The comments filed in this docket show that the Commission could draw that same conclusion for competitors that provide broadband services, and particularly for those that provide broadband services to small and medium-sized businesses.

A. Reliance on Incumbent LEC Last-Mile and Transport Facilities

The fact that competitors still rely on ILEC last-mile and transport circuits to provide broadband services to small and medium-sized businesses was confirmed by the evidence offered by competitors in this proceeding. For example, CALTEL described that TelePacific Communications "remains heavily dependent on access to ILEC last-mile facilities, and estimates that approximately 40% of its operating expense is allocated to leasing last-mile special access circuits or UNEs."[17] CALTEL also noted that TelePacific "also leases inter-office transport from eleven (11) carriers, but calculates that it has the option to purchase that access from a non-ILEC vendor only about 50% of the time."[18]

CALTEL member Creative Interconnect, who recently invested in a "multi-year, millions-of-dollars…all-Ethernet (IP-enabled) network," also relies exclusively on last-mile copper and UNE DS1 circuits from the incumbent LEC. CALTEL further explained that Creative Interconnect, which because of its size must pay the highest special access

[16] *Id.* at paragraph 88.

[17] *See* CALTEL Comments at page 6.

[18] *Id.* at pp. 6-7.

"rack rates," when UNEs are not available can really only offer services to business customers who are located near ILEC central offices where UNE DS1 transport is still available.[19] Similarly, CALTEL member Sonic.net, despite its investment in a new "all-you-can-eat-voice-and-broadband" network serving residential and very small business (VSB) customers, also relies exclusively on leased copper loops.[20]

Other competitive carriers confirmed the experiences of the CALTEL members by noting their own dependence on ILEC last-mile inputs:

- PAETEC stated that it "relies on leased facilities for more than 97 percent of its last-mile facilities use, the majority of which are special access circuits that PAETEC obtains from the ILECs." [21]
- Cbeyond stated that it "relies entirely upon incumbent LEC loops or enhanced extended links to serve its customers in a cost-effective manner." Its reasons are purely economic: it states that its average revenue per customer is "approximately $750 per month," which is not enough to justify the expense of loop construction.[22]
- Megapath's subsidiary, Covad Communications, stated that it "relies exclusively on incumbent LEC last-mile facilities to serve small and medium business customers."[23]

[19] *Id.* at page 22.

[20] *Id.* at page 26.

[21] *See* Comments of PAETEC Holding Company ("PAETEC Comments") at page 7.

[22] *See* Cbeyond et al Comments at page 20.

[23] *Id.*

- And while Integra Telecom and tw telecom both state that they would "prefer to build, own, and operate all of the facilities (used) to serve small and medium-sized business customers," [24] both provided confidential data showing that self-deployment of facilities, especially loops, is not generally "economically feasible."[25]

B. Economics of Self-Deployed Last-Mile Connections

The Commission's analysis of competitors' current and potential self-deployment of last-mile connections to enterprise customers in Phoenix also appears to apply to the business broadband market in general:

> That a few competitors have constructed some competitive loop facilities in the Phoenix MSA does not support a conclusion that competitors would find it potentially profitable to build duplicative loop facilities throughout the market…competitors likewise have few lit buildings, and that these competitors are not viewed as offering significant alternatives to Qwest's wholesale service offerings. Although there is some evidence of limited wholesale activity with respect to particular buildings, we find no basis to conclude that potential entry would be sufficient to ensure a competitive market in the overall Phoenix MSA. Rather the fact that facilities-based competitors have so few last-mile connections suggests that entry is costly and difficult.[26]

For most CALTEL members, like Cbeyond in the example above, the average revenue per small business customer forecloses the economic viability of loop construction. Larger carriers like TelePacific have a small number of "lit" buildings, "where the size of the customer and/or the economics of bringing fiber into the building has proven to be economically viable." CALTEL went on to explain, however, the enormous expense and long planning horizons associated with any kind of fiber

[24] *Id.*

[25] *Id.* at pp. 20-22.

[26] *See* Phoenix Order at paragraph 73.

deployment that make it feasible for competitors only in limited circumstances, and even then only for the handful of largest competitors.[27]

Integra Telecom and tw telecom reinforced CALTEL's point by describing similar "build vs. buy" processes and providing the Commission with confidential information about average revenue and the number of self-deployed facilities. Both concluded that the economics of self-deployed facilities did not prove "cost effective…to the overwhelming majority of (their) customer locations." [28]

C. Wholesale Inputs from Cable Companies

The Commission also assessed the availability of wholesale inputs from the incumbent cable company in the Phoenix Order:

> In limited situations, competitive carriers, including Cox, have constructed their own last-mile connections to enterprise customers, and in even more limited situations appear to offer these services to competitors as wholesale inputs.[29]

Unfortunately in this case, the comments in this docket not only confirmed that wholesale services from the cable companies are likewise unavailable to support broadband services, but actually gave an example of how a request for a wholesale loop had resulted in loss of the potential customer to the cable company:

> Cbeyond has not found any non-incumbent LEC wholesaler, including any cable company, that offers efficient rates, terms and conditions, has sufficiently extensive network coverage, or has sufficiently sophisticated and reliable wholesale operations support systems for Cbeyond to rely on it as a wholesale provider of loop facilities in any geographic market in which Cbeyond offers service.[30]

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[27] *See* CALTEL Comments at page 12-13.

[28] *See* Cbeyond et al Comments at pp. 20-22.

[29] *See* Phoenix Order at paragraph 71.

[30] *See* Cbeyond et al Comments at page 22.

> Integra has had the same experience. It has been unable to rely on any cable provider as its primary wholesale provider of loop facilities in any of the markets in which it provides service.[31]
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> PAETEC has found that some cable companies offer wholesale services where those companies have overbuilt fiber into the business market, although their coverage of business premises in a typical market is very low. In most markets where cable fiber facilities have been built into the business areas of a Metropolitan Service Area ("MSA"), PAETEC's experience is that a miniscule percentage of the business premises are served by alternative fiber by cable companies. Moreover, PAETEC has found that deregulated wholesale prices offered to PAETEC by both cable companies and ILECs typically exceed the retail prices these companies are offering to end users located in the same premises, making it virtually impossible to compete in such circumstances using deregulated wholesale inputs.[32]
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> When PAETEC as a cable company for a quote to provide Ethernet access to a particular business address, the cable company may opt not to offer PAETEC that service, even though the building is on-net and the service is available. Furthermore, it has been PAETEC's experience that the cable company may then send a retail sales representative to the business address of PAETEC's inquiry to capitalize on the opportunity PAETEC identified.[33]

The lack of wholesale inputs to support broadband services make it apparent that, as the Commission found in its analysis of the Phoenix voice market, competitors must rely on the wholesale last-mile and transport circuits of the incumbent LEC in order to provide broadband services to business customers.

IV. ILEC Claims of a "Robust" Wholesale Market Are Unsupported and Refuted by Overwhelming Evidence to the Contrary

At the end of its comments, AT&T notes "no broadband provider in the country has a network extensive enough to serve every possible customer, and therefore all

[31] *Id.*

[32] *See* PAETEC Comments at pp. 9-10.

[33] *Id.* at page 11.

broadband providers rely to some extent on wholesale inputs." CALTEL agrees. What CALTEL does not understand is how AT&T can leap from this statement, and a brief recital of the different "flavors" of wholesale inputs, to the erroneous and unsupported conclusion that the "marketplace for wholesale broadband services is extremely robust and has facilitated the incredible success of the broadband business marketplace as a whole."[34]

AT&T's bases its conclusion in part on the record of the long-undecided Special Access proceeding. AT&T further points to CLEC wholesale fiber and dark fiber, wholesale inputs from cable companies, and fixed wireless from carriers like Clearwire.[35] As usual, though, AT&T fails to distinguish between alternatives to incumbent LEC last-mile connections and the more readily available (but still constrained) alternatives to ILEC inter-office transport.

The comments submitted by competitive carriers in this docket, including those containing the examples cited above in these reply comments, rebut AT&T's assertions regarding wireline last-mile wholesale loops. And AT&T's claims about Cbeyond's use of fixed wireless access from Clearwire is directly refuted by Cbeyond's own description of the limitations associated with this option:

> Nor do Cbeyond's customers view fixed wireless services as substitutes for the services that Cbeyond provides. This is because, among other things, (1) fixed wireless providers rely on a shared network architecture and cannot guarantee QoS; (2) voice traffic over fixed wireless networks is subject to distortion, jitter, and latency; and (3) fixed wireless networks cannot support a number of data applications that require constant communication with the server, such as

[34] *See* AT&T Comments at page 33.

[35] *Id.* at pp. 34-35.

> Cbeyond's Hosted Microsoft Exchange application and videoconferencing applications.[36]

Verizon provided even less support for its claims about the competitiveness of the wholesale market. Inserted into a section devoted to "other competitive wireline business broadband services," Verizon asserts the following:

> One constant, however, is that there is extensive competition—at both the wholesale (i.e. facilities-based) and retail levels—for each of these types of services.[37]

This assertion is followed by discussions about the availability of business DSL services and metro Ethernet services to small and large business customers. The only discussion of alternative wholesale options is in a footnote citing a 2005 Commission Order that found that AT&T purchased special access services from Verizon.[38]

Qwest's comments regarding the wholesale market are limited to an assertion that "Qwest is on the record as postulating that, in the area of private line/special access services, its prices are already subject to market pressures that ensure the proper economic result and that further price regulation of these services (when provided by an ILEC) is neither warranted nor in the public interest."[39]

These unsupported ILEC claims are overwhelmingly refuted by the data provided by the competitors in this docket.

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[36] *See* Cbeyond et al Comments at page 7.

[37] *See* Verizon Comments at page 23.

[38] *Id.* at page 25, fn 88.

[39] *See* Qwest Comments at page 2.

V. Regulatory Barriers Impact Business Customers' Ability to Retain/Obtain Lower-cost, Higher-speed, More Flexible Broadband Services

One of the common threads through most of the comments in this proceeding was the description of the advantages of Ethernet as a low-cost, high-speed, flexible broadband option for small and medium business customers.[40] More than any other emerging product or service, Ethernet is, as CALTEL stated in it comments, perceived by business customers to be "good dog food." The Ad Hoc Telecommunications Users Committee, which represents a group of business customers, explained these advantages best:

> Ethernet, where available, continues to attract growing numbers of business customers, for two primary reasons. First, it tends to be priced lower than traditional services despite similarities in the services' underlying cost structures (due to common infrastructure inputs such as conduit, rights of way, building access, etc.). Second, many business customers can achieve significant efficiencies and cost savings when they add capacity because they can fine-tune their purchases thanks to Ethernet's small capacity increments.3 Footnote 3: Ethernet is typically available in increments of 10, 50 and then 100s Mbps while incumbent digital services leap from a DS1 capacity of 1.544 Mbps to a DS3 capacity of 44.736 to an OC3 capacity of 155 (Mbps).[41]

CALTEL's comments described how competitors like TelePacific Communications and Creative Interconnect are deploying Ethernet over legacy copper loops (Ethernet over Copper, or EoC) leased from the incumbent LECs.[42] Other

[40] *See for example* CALTEL Comments at pp. 10-11, 14-20, AT&T Comments at pp. 3-4, 271 Coalition Comments at pp. 15-16, Cbeyond et al Comments at page 2, PAETEC Comments at page 11, Comments of XO Communications LLC ("XO Comments") at pp. 3-5, Comments of Comcast Corporation at page 3, Time Warner Cable Comments at page 6.

[41] *See* Comments of the Ad Hoc Telecommunications Users Committee ("Ad Hoc Comments") at page 4.

[42] *See* CALTEL Comments at pp. pp. 10-11, 14-20.

comments, like those of CALTEL member XO Communications, explained how little functionality is lost when Ethernet is deployed over copper instead of fiber:

> As a result of advances in copper technology, EoC can support data speeds up to 45 Mbps today and possibly greater than 100 Mbps in the future. By using EoC, carriers can provide businesses and other customers with service capabilities that are comparable to fiber-based Ethernet service. EoC service providers, for example, are able to provide multiple services, such as VoIP, private line, and Internet access, over one physical connection. Like fiber-based Ethernet services, EoC supports a variety of applications, including point-to-point and multipoint-to-multipoint services connecting customers' Ethernet ports, cellular and WiFi backhaul, and backhaul for Digital Subscriber Line Access Multiplexers. Footnote 5: In areas beyond the reach of fiber, a carrier can also provide an anchor tenant with EoC service at least ten times more quickly than it can deploy and deliver a fiber-based Ethernet service to that customer.[43]

As XO notes, Ethernet over Copper is cost-effective, operationally flexible, and most importantly, can be used right away by the eighty percent of commercial buildings that are served by copper plant but unserved by fiber.[44] XO and other comments also point to the potential for deploying Ethernet over Copper to business customers in rural, underserved and unserved areas.[45] In that regard, another CALTEL member, New Edge Networks, submitted comments that discussed the advantages of competitive choice for these customers when competitors do not need to duplicate existing last-mile connections:

> The availability of wholesale broadband access services has a significant and positive impact on broadband adoption and broadband deployment, especially as wholesale broadband inputs are often used to serve businesses in smaller, more rural areas, particularly those outside of the former Bell Operating Company territories. In fact, when broadband network providers offer service in previously unserved (or underserved) areas, they provide a competitive alternative in areas where building out additional infrastructure might not be economically feasible.

[43] *See* XO Comments ("XO Comments") at page 3.

[44] *Id.* at page 2.

[45] *Id.* at page 4, *see also* SBA Comments at pp. 5-6.

> The ability to provide customers with a competitive broadband access choice ensures that previously unserved areas to not immediately transition into underserved areas. Moreover, the offering of wholesale broadband access by competitive broadband network providers venturing into unserved areas means fuller utilization of newly build broadband networks and swifter realization of network investments.[46]

The ability for competitors to continue providing Ethernet over Copper to existing customers, and to reach new customers and new, less urban areas, relies on preservation of the already "ubiquitously deployed" copper infrastructure.[47] Retirement of any segment of that copper plant, however, is simply a barrier to competitors' ability to provide Ethernet over Copper services to current and future business customers.

Likewise, AT&T's deployment of remote terminals and hybrid fiber-copper loops also is a barrier to competitors' ability to offer Ethernet over Copper to customers that otherwise could benefit from Ethernet over Copper and other innovative business broadband solutions.[48] High special access rates and the absence of just and reasonable 271 rates in wire centers that the incumbent LEC has classified as "unimpaired" also combine to ensure that competitors are foreclosed from offering Ethernet over Copper to many otherwise-eligible customers in major metropolitan areas.[49]

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[46] *See* Comments of Earthlink, Inc. and New Edge Networks, Inc. ("Earthlink Comments") at page 6.

[47] *See* CALTEL Comments at page 2, , *and also* XO Comments at pp. 5-7, SBA Comments at pp. 5-6, PAETEC Comments at page 13, Cbeyond et al Comments at page 35, COMPTEL Comments at page 4, and 271 Coalition Comments at pp. 15-17.

[48] *See* CALTEL Comments at pp. 27-28, *and also* PAETEC Comments at page 13, Cbeyond et al Comments at pp. 26-27 and 33-34, COMPTEL Comments at page 3, and 271 Coalition Comments at page 18.

[49] *See* CALTEL Comments at page 22, , *and also* Ad Hoc Comments at page 2, XO Comments at pp. 7-8, Earthlink Comments at pp. 12-13, PAETEC Comments at page 13, COMPTEL Comments at page 5, and 271 Coalition Comments at pp. 18-19.

VI. Past Commission Predictions And Decisions About Competitive Wholesale Inputs Are Clearly in Need of Reevaluation In Light of the Facts and Technological Advances

The comments submitted in this docket demonstrate that there is a compelling need for the Commission to look at actual data regarding the deployment of wholesale services with new eyes instead of relying on predictions of what it hopes will come to pass. In this regard, the Phoenix Order again provides a helpful analogy.

In the Phoenix Order, the Commission recognized that it needed to reconsider and reevaluate prior decisions, especially those that rely on predictions about technology trends and market development, in light of current facts and data:

> This higher-level analysis led to certain conclusions that were not adequately justified as a matter of economics. For example, while acknowledging that there were no other providers of wholesale facilities or services besides Qwest, the Commission eliminated all unbundled loop and transport obligations based largely on predictive judgments.[50]
>
> Upon further consideration, we find that these predictions have not been borne out by subsequent developments, were inconsistent with prior Commission findings, and are not otherwise supported by economic theory.[51]

As the Phoenix Order further noted, "the D.C. Circuit has recognized that the Commission 'is fully capable of reassessing the situation if its predictions are not borne out.'"[52]

The Ad Hoc Telecommunications User Committee used the Phoenix Order to discuss the fallacy of relying on past Commission predictions about technological developments and potential competitive alternatives:

[50] *See* Phoenix Order at paragraph 26.

[51] *See* Phoenix Order at paragraph 28.

[52] *See* Phoenix Order at paragraph 29.

> Finally, the Commission has for the past several years justified broadband deregulation with unsubstantiated predictions that providers of wireless services like satellite and broadband over power line would be entering the broadband market. But those predictions were at odds with the facts at the time they were made and have not been borne out by experience since then. Satellite service is not a functional substitute for ILEC broadband services (for) business due to price and latency, while broadband over powerline has never, in fact, been deployed. Business users were therefore encouraged when the Commission recently, and quite correctly, rejected unsubstantiated predictions of competitive entry by alternate providers as a valid basis for de-regulation.[53]

As many comments point out, prior Commission decisions about viability of copper facilities, the economics of fiber deployment, and the availability of alternative wholesale inputs were based on outdated facts or inaccurate predictive judgments about a then "emerging" broadband market.[54] As the comments in this proceeding demonstrate, the current facts, economic realities, and unpredicted technological developments all reinforce the need for the Commission to reassess these vital wholesale competition issues.

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[53] *See* Ad Hoc Comments at page 6.

[54] *See* Phoenix Order at fn 256, discussing that WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14880–81, 14894–98, paragraphs 50, 77–85 (2005) (*the Wireline Broadband Internet Access Order)* found that the marketplace for broadband Internet service was "an emerging market," and that while "[c]able modem and DSL providers are currently the market leaders," there was evidence of "other existing and developing platforms, such as satellite and wireless, and even broadband over power line in certain locations."

CONCLUSION

For the reasons described above, CALTEL urges the Commission to open a comprehensive NPRM on the wholesale competition issues outlined in Recommendations 4.7, 4.9, and 4.10 of the Commission's National Broadband Plan, and looks forward to participating in this critical proceeding in the future.

Respectfully submitted,

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